



## Arizona Underground Storage Tank Program Brief

On April 9, 2015, Arizona Governor Doug Ducey signed HB2636, which creates a new and improved Underground Storage Tank (UST) Program starting on January 1, 2016 under the Arizona Department of Environmental Quality (ADEQ).

### Time Barred Claims Overview

Time barred claims include both those claims that were part of the old State Assurance Fund (SAF) program but were foreclosed by the statutory deadline to submit claims by June 30, 2010 (gap 1 claims) and those releases that occurred after the statutory June 30, 2006 release reporting deadline until the start of the new program on January 1, 2016 (gap 2 claims).

All applications for reimbursement of any time barred claims must be submitted by December 31, 2016. Owners and operators (O/Os) with gap 1 or gap 2 claims where remediation is still underway must participate in the preapproval process outlined below to be eligible for reimbursement on any work conducted after January 1, 2016.

Gap 1 claims will be paid first, before gap 2 claims. Claims are to be paid pro rata based on available funds (not less than \$28,000,000 in 2017 and \$5,000,000 annually thereafter). To be eligible, claims must be for costs that were reasonable and actually incurred for corrective work that was performed after June 30, 2010. O/Os are eligible for reimbursement of 90% of qualifying costs. For O/Os that use insurance to satisfy financial responsibility (FR) obligations, reimbursement is capped at \$1,000,000 per facility (not per release). For O/Os that use another FR mechanism, reimbursement is capped at \$500,000 per facility. O/Os must currently have FR to be eligible for payment of time barred claims.

### New Program Overview

Highlights of the new program include a seven year baseline assessment period; grant authority; reimbursement for corrective action costs not covered by available financial responsibility mechanisms; State Lead clean up and compliance inspection funding; and payment of time barred claims.

During a 24-month insurance study period, O/Os must report FR denials or nonpayments to ADEQ. By January 1, 2017, O/Os using insurance to meet FR obligations must obtain insurance that has a retroactive date tied to (1) the most recent baseline assessment or other similar site characterization, (2) the date of the tank system installation, or (3) the earliest retroactive date under the last policy. ADEQ must assist O/Os with making a claim against their FR mechanism.

Baseline assessments are optional and may be conducted at the O/Os expense, through a grant or by ADEQ. Baseline standards will be developed by ADEQ and must be preapproved until those standards are finalized. All baselines must be conducted by a registered professional.

Grants will be available for tank pulls, baselines, site upgrades and suspected release investigations. Sites are eligible for up to \$100,000 in funding. Financial need, tank system and site conditions and other factors will be considered when making grant awards.

The program creates a mandatory preapproval process to manage remediation costs and avoid disputes regarding reimbursement. Small owners with less than twenty facilities in the state receive priority for reimbursement. O/Os must make a timely insurance claim and pursue that claim until denial or constructive denial for program eligibility. O/Os are eligible for reimbursement of 100% of qualifying costs. Reimbursement is capped at \$1,000,000 per facility.

For owners and operators who do not satisfy FR through insurance or with high deductible insurance (over

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\$50,000 deductible), program eligibility is contingent on payment of a \$50,000 per facility cost share obligation and provides coverage up to the deductible.

ADEQ has new authority to conduct noncorrective actions at sites if the O/O requests their assistance including baseline assessments, suspected release investigations and tank closures. ADEQ has new lien authority for unrecovered corrective action costs at a site owned by a volunteer or at a site that does not have FR.

ADEQ must prepare a report to the governor and legislature by December 31, 2017 and every three years thereafter to track program progress. The law extends the penny per gallon UST tax until January 1, 2024 and repeals the UST Policy Commission and the UST Technical Appeals Panel.

In the coming months, ADEQ will begin planning to implement the provisions of the new law. APMA will be participating fully in these processes and will keep members apprised of developments. The brief above is intended to provide a general overview of recent legislation and individuals should consult with legal counsel about their particular circumstances.